



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011-257

**Massabni
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before: Judge Luis María Simón, Presiding

Judge Sophia Adinyira

Judge Jean Courtial

AT-238

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JUDGE LUIS MARÍA SIMÓN, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Ms. Micheline Massabni on 28 September 2011 against Judgment No. UNDT/2011/127 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) on 13 July 2011 in Geneva. The Secretary-General filed an answer on 14 November 2011.

Synopsis

2. The duties of a Judge prior to taking a decision include the adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words,

6. This Tribunal affirmed the first instance Judgment and dismissed the appeal.

Facts and Procedure

7. Ms. Massabni joined the United Nations Conference on Trade and Development (UNCTAD) in Geneva in 1980. In May 2005, she was laterally assigned to the P-3 position of Chief of Central Support and Reference Unit (Chief of Unit), within the restructured Central Statistics and Information Retrieval Branch.

8. In July 2006, Ms. Massabni wrote to the Deputy Secretary-General of UNCTAD requesting reclassification of her post to the P-4 level and, if possible, to the P-5 level, on the ground that the duties and responsibilities of the post of Chief of Unit had changed substantially as a result of the restructuring within her office.

9. In February 2009, Ms. Massabni submitted to the Director, Division on Globalization and Development Strategies, her second-level supervisor, a request for reclassification form that she had signed and completed in her own name and that of her direct supervisor, the Chief of the Central Statistics and Information Retrieval Branch.

10. But on 15 June 2009, Ms. Massabni's direct supervisor recommended against

Submissions

Ms. Massabni's Appeal

17. Ms. Massabni submits that the UNDT erred in law in redefining the administrative decision that she was contesting. She was appealing the refusal by the Assistant Secretary-General for Human Resources Management to submit her classification appeal to the Classification Appeals Committee, and not the decision not to reclassify her post to the P-4 level, as redefined by the UNDT. Ms. Massabni maintains that the two decisions are not equivalent. Ms. Massabni is entitled to a properly classified job description under Staff Rule 2.1(a) as part of her conditions of service, but she does not have a right to reclassification of her post. The UNDT redefined the decision under appeal without legal basis.

18. Ms. Massabni also submits that the UNDT erred in fact and law in reaching its conclusions about the likely outcome of a classification appeal.

19. Ms. Massabni maintains, contrary to the UNDT's erroneous finding, that the implementation of a reclassification decision would not have been required for her to be eligible for a Special Post Allowance (SPA). Had she been successful in her classification appeal, a temporarily vacant post or a post borrowed from another organizational unit could have been used for implementation of the SPA. Ms. Massabni insists that such temporary use of posts is a common practice in the Organization.

20. Ms. Massabni avers that the UNDT erred in law in limiting compensation for moral damage to the period after 26 June 2009, when she wrote to HRMS/UNOG. She did not receive a classified job description at the time of her reassignment to the post of Chief of the Unit in May 2005. Less than one year in her new job, Ms. Massabni began to develop doubts and concerns about the level of her post and the adequacy of her salary. Those doubts and concerns persisted for four and half years with negative impact on her morale. Ms. Massabni submits that the UNDT also failed to take into account the moral damage in the form of frustration, stress and demoralization caused by the bad faith of her supervisors who had encouraged Ms. Massabni to prepare a job description but had had no intention of proceeding with the steps necessary for the reclassification of her post, the negligence and incompetence on the part of HRMS/UNOG resulting in her receiving incorrect or incomplete information about the reclassification procedure, and the undue delays in the handling of her case. In her view, the compensation in

the amount of USD 1,500 was not commensurate with the material and moral damage that she suffered, and a commensurate compensation should not be less than six months' net base salary.

Secretary-General's Answer

21. The Secretary-General submits that the UNDT correctly declined to award Ms. Massabni compensation for material damage as there was no evidence that her post would have been reclassified to the P-4 level had her case been submitted to the Classification Appeals Committee. The UNDT's decision on this issue was fully consistent with the jurisprudence of the Appeals Tribunal such as *Solanki*, *Bofill*, etc. Ms. Massabni had failed to demonstrate that there existed vacant P-4 posts in other parts of the Organization that were available for the Central Statistics and Information Retrieval Branch for the purpose of granting her an SPA, in the event that her request for reclassification was approved.

22. The Secretary-General also submits that the UNDT correctly limited its scope to the contested decision properly before it and limited its consideration of moral damages to 26 June 2009, when Ms. Massabni triggered the procedure under ST/AI/1998/9. In the opinion of the Secretary-General, Ms. Massabni has made the allegations of bad faith, but has submitted no evidence in support of those allegations.

23. The Secretary-General further submits that Ms. Massabni's arguments about equal pay for equal work did not form part of her request for management evaluation and are therefore not receivable.

24. Finally, the Secretary-General considers that the determination of compensation was within the discretionary authority of the UNDT, and that Ms. Massabni has failed to demonstrate the loss or harm suffered that would warrant an increase in the compensation awarded.

Considerations

25. The duties of a Judge prior to taking a decision include adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties' submissions.

26. Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and subject to judicial review, which could lead to grant, or not to grant, the requested judgment.

27. It follows from the above that the UNDT did have a legal basis to define the administrative procedure and decisions subject to review. And it was also right for the UNDT to consider that Ms. Massabni was contesting not only the decision not to submit her classification appeal to the Classification Appeals Committee but also the final non-classification of Ms. Massabni's post to the P-4 level as requested by her. All the motivation of the application and the reasons for the petition of compensation rely, in the end, in the Administration's consideration of the post as P-3.

28. At issue is not the interpretation given by

Original and Authoritative Version: English

Dated this 29th day of June 2012 in Geneva, Switzerland.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Courtial

Entered in the Register on this 12th day of September 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar